IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 452 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ALKA RAKESH SHAH THRO' J K JOSHI, DRUG INSPECTOR

Appearance:

Mr S P Dave, APP for Petitioner

MRS SHILPA J UNWALLA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 04/05/2001

ORAL JUDGEMENT

The petitioner, State of Gujarat on behalf of the Drug Inspector, Ahmedabad, under Section 397 of the Code of Criminal Procedure, 1973 (for short, 'the Code') challenging the order passed by the learned Chief Metropolitan Magistrate, Ahmedabad dated 22.8.2000

permitting handing over certain drugs to the present respondent no.2. The contention of the petitioner is that the drugs in question were not manufactured by duly licenced manufacturer. In other words, the manufacturer has manufactured these drugs after the expiry of licence to manufacture the drugs. Therefore, there is clear violation of section 18 of the Drugs and Cosmetics Act, 1940 (for short, 'the Act'). That therefore, the learned Magistrate has committed serious error in law in directing that the drugs be handed over to contesting respondent no.2. Therefore, the said order is challenged in this Revision.

2. On receiving the Revision Application, rule was issued and Mr J S Unwala, learned Advocate appears in response to the rule on behalf of respondent No.2. I have heard Mr S P Dave, learned APP for the State and Mr J S Unwala, learned Advocate for respondent no.2. I have also gone through the papers made available to me. It may be recorded here that before the trial court, the Drug Inspector, who has brought this Revision Application, has submitted a writing which is placed at pages 8 and 9, before the trial court wherein it has been clearly stated by the Drug Inspector that no offence has been registered or filed against the contesting respondent and legal proceedings have been commenced against the manufacturer and, therefore, in view of the decision recorded by this Court in Special Criminal Application No.569/99 dated 20.8.1999 proper orders to be passed by the court. This shows that there were no objection raised by the Drug Inspector before the trial court against handing over of the drugs to the contesting respondent. That is why the order was passed on 22.8,2000 which is placed at page 7. Thereafter, the revision has been drafted on 30.10.2000 and it appears to have been signed on 11.11.2000. It has been mainly contended here that under Section 18 of the Act, the manufacturer was required to hold a valid licence for manufacturing drug. That in the present case, the date on which the drug was manufactured, the period of licence had expired and, therefore, technically, the manufacturer was not holding valid licence for manufacturing the drug. During the course of argument, this point was not seriously disputed. However, the case of the contesting respondent is that he has got a valid defence under section 19(3) of the Act. This provision can be referred hereinbelow for ready reference:

"19(3) A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a

contravention of Section 18 if he proves -

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and

(c) that the drug or cosmetic, while in his possession, was properly stored and remained in the same state as when he acquired it."

This sub-section makes clear that if a person who is not manufacturer of a drug or cosmetics or his agent for the distribution thereof, shall not be liable for a contravention of section 18, if he proves that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof. In the present case, it has come on record that the present contesting respondent has purchased medicine from a duly licenced dealer. Even the petitioner has not disputed this position, meaning thereby the defence shown in sub-section 19(3) is prima facie, available to the contesting respondent. Moreover, the fact is supported by the fact that no complaint has been filed against the contesting respondent. It is not the case of the petitioner that there is a contemplation to file complaint against the contesting respondent. So on the one hand, no complaint has been filed against the contesting respondent, on the other hand, there is no contemplation to file such a complaint against the respondent. In that view of the matter, when particularly, the Drug Inspector himself has agreed for appropriate order before the court, it is not open to the present petitioner in this revision to now say that the order passed by the learned Magistrate is illegal. An attempt was made to show that the manufacturer has not maintained the records about the testing and examination of raw material as per the requirement of rule and, therefore, the capsules which were manufactured may not be upto the standard. Now on this aspect, no point was raised before the trial court and even in the memo of Revision, this point has not been agitated. In that view of the matter, I am of the opinion, that this is not a pure question of law. It is based on fact as to whether

or not the manufacturer had carried out test of raw materials or not. In absence of any material involving the aforesaid set of facts, it would not be open for this court to examine the Revision Application from that angle. In that view of the matter, I am of the view that when the Drug Inspector himself had agreed to the order in favour of the contesting respondent and when there is technical defence in favour of the contesting respondent, as envisaged in Section 19(3) of the Act, the order of the trial court cannot be said to be illegal. No other point has been shown or argued that the order passed by the learned Magistrate can be treated to be illegal. It is to be seen that 17 samples were taken and 15 of them were found to be standard medicines. The order has been passed with respect to those medicines only. At the same time, two samples were found to be sub-standard and no order has been passed in favour of the contesting respondent with respect to those medicines. Therefore, even the learned Magistrate has taken due care to see that the sub-standard medicines do not go to the hands of the contesting respondent. In that view of the matter, the order passed by the learned Magistrate cannot be treated to be illegal and, therefore, this being the Revisional Court, it is not open to this Court to go into the factual aspect of the case. In above view of the matter, this Revision Application is devoid of any merit and deserves to be dismissed.

In the result, this Revision Application is dismissed. Rule discharged. Interim relief, if any, stands vacated. D.S. permitted.

4.5.2001 [D P Buch, J.]
msp